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Solved
Exhibit 1 36

93-75

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 83D-4

1866

In re Application of)

INTERNATIONAL PANORAMA TV, INC. (KTBN-TV)
Santa Ana, California)

BC DOCKET NO. 80-655
File No. BPCT-5154

For a Television Station Construction Permit)

Appearances

James A. Gammon, Colby M. May and Joseph E. Dunne, III on
behalf of International Panorama TV, Inc.; Seymour M. Chase
and Joyce L. Ausbeck on behalf of Saddleback Broadcasting
Company, Inc. and Daniel Sarno on behalf of the Chief,
Broadcast Bureau, Federal Communications Commission.

Initial Decision

of

Administrative Law Judge Thomas B. Fitzpatrick

Issued: January 17, 1983 ; Released: January 25, 1983

Preliminary Statement

1. This proceeding involves the major change application of International Panorama TV, Inc. (International), licensee of Station KTBN-TV, to modify the city of license of Station KTBN-TV, Channel 40, from Fontana, California to Santa Ana, California. International filed its application on February 13, 1978. The competing application of Saddleback Broadcasting Company, Inc. (Saddleback) was filed on the May 22, 1978 cut-off date.

2. By Hearing Designation Order, released October 28, 1980 (45 Fed. Reg. 72787, published November 3, 1980), the Commission designated the mutually exclusive applications of International and Saddleback for hearing. The following issues were specified:

- (1) To determine, with respect to International:
 - (a) whether International interviewed leaders of minority and ethnic groups in Santa Ana.
 - (b) whether International's programming proposal is designed to respond to the ascertained needs and problems.
 - (c) whether, based on evidence adduced pursuant to the above, International is qualified.

Federal Communications Commission

Docket No. 93-75 Exhibit No. 3/6 35

Presented by S.A.L.A.D.

Disposition	{	Identified	<u>✓</u>
		Received	<u>✓</u>
		Rejected	<u> </u>

Reporter M.K. FLEISHMAN

Date 12/22/93

- (2) To determine, on a comparative basis, which of the applications would better serve the public interests.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

3. By Memorandum Opinion and Order (FCC 80M-2503), released December 4, 1980, the Presiding Judge permitted evidence to be adduced at the hearing under the standard comparative issue relative to the respective areas and populations to be served by each of the applicants.

4. By Memorandum Opinion and Order (FCC 81M-489), released February 20, 1981, the Presiding Judge granted summary decision on issue 1(a) designated against International.

5. By Memorandum Opinion and Order (FCC 81M-825), released March 20, 1981, the Presiding Judge ordered the comparative issue in this proceeding enlarged to include an inquiry as to the past broadcast record of Station KTBN-TV, licensed to International.

6. By Memorandum Opinion and Order (FCC 81M-889), released March 27, 1981, the Presiding Judge enlarged the issues to include the following:

- (a) To determine whether the application of Saddleback Broadcasting Company, Inc. was prepared, certified and executed, as required by the law;
- (b) To determine whether Malcolm C. Klein attempted to mislead the Commission or was lacking in candor with respect to the preparation, execution and certification of the Saddleback application;
- (c) To determine, in light of the evidence adduced under issues (a) and (b), the impact upon the basic and/or comparative qualifications of Saddleback Broadcasting Company, Inc. to be a Commission licensee. 1/

7. By Memorandum Opinion and Order (FCC 81M-890), released March 27, 1981, the Presiding Judge enlarged the issues:

To determine whether Saddleback Broadcasting Company, Inc. has complied with the requirements of Sections 73.3514 and 1.65 of the Commission's Rules and, if not, the effect of such failure on the basic and/or comparative qualifications of Saddleback Broadcasting Company, Inc. to be a broadcast licensee;

1/ Issue (c) was re-framed during the April 3, 1981, prehearing conference (TR 101-103).

To determine the availability to Saddleback Broadcasting Company, Inc. of the \$2 million bank loan and whether, in light of the evidence adduced relative to this loan, Saddleback is financially qualified to be a broadcast licensee.

8. By Memorandum Opinion and Order (FCC 81M-943), released April 3, 1981, the Presiding Judge expanded the inquiry with respect to compliance by Saddleback with Sections 73.3514 and 1.65 of the Rules.

9. By Memorandum Opinion and Order (FCC 81M-1022), released April 7, 1981, the Presiding Judge further expanded inquiry under the reporting issues added against Saddleback (TR 105). 2/

10. By Memorandum Opinion and Order (FCC 81M-1519), released May 14, 1981, the Presiding Judge enlarged the issues against International to include the following:

To determine all of the facts and circumstances surrounding the representations in the construction permit application filed by International Panorama TV, Inc. on February 13, 1978, with respect to when the civic leader ascertainment survey was conducted;

To determine, in light of the evidence adduced under the foregoing issue, the impact upon the basic and/or comparative qualifications of International Panorama TV, Inc. to be a broadcast licensee.

11. By Memorandum Opinion and Order (FCC 81M-2986), released September 21, 1981, the Presiding Judge enlarged the issues to include the following:

To determine all of the facts and circumstances surrounding the filing with the Commission by Saddleback Broadcasting Company, Inc. (Saddleback) of the Japan California Bank letter and the United California Bank letter and whether Saddleback failed to make full disclosure to this Commission; whether it was lacking in candor or misrepresented facts to this Commission and the effect, if any, upon Saddleback's basic and/or comparative qualifications to be a broadcast licensee;

To determine all of the facts and circumstances surrounding the submission of the general public survey and whether Saddleback was lacking in candor or misrepresented facts to this Commission with respect to this survey and the effect, if any, upon Saddleback's basic and/or comparative qualifications to be a broadcast licensee.

2/ The Presiding Judge set forth his reasons for expanding the inquiry during the April 3, 1981 prehearing conference. (TR 102-108)

12. On November 9, 1981, the applicants filed a "Joint Petition for Approval of Agreement." Under the terms of the proposed agreement, Saddleback agreed to dismiss its application upon reimbursement by International of Saddleback's reasonable and prudent expenses. By Order (FCC 82M-0437), released February 9, 1982, the Presiding Judge granted the joint petition and dismissed, with prejudice, Saddleback's application.

13. By Order (FCC 82M-0779), released March 10, 1982, the Presiding Judge deleted issue 1(b), originally designated against International. By Memorandum Opinion and Order (FCC 82M-0804), released March 11, 1982, the Presiding Judge denied summary decision on the remaining issues facing International and held that the burden of proceeding with the introduction of evidence and the burden of proof with respect to these issues rests with International.

14. The dismissal of Saddleback's application mooted the various issues relative to its proposal and also mooted all of the comparative aspects of this proceeding. As a result of the grant of summary decision as to issue 1(a) and deletion of issue 1(b), the only issue remaining for resolution is whether International misrepresented with respect to when its civic leader ascertainment survey was conducted.

15. Prehearing conferences were held on December 22, 1980; April 3, April 30, August 5, September 30, 1981; February 2, and March 24, 1982. Hearing sessions were held on July 21, 22 and 23, 1982, at which time the record was closed.

16. Proposed Findings of Fact and Conclusions of Law were filed by International and the then Broadcast Bureau (Bureau) on November 4, 1982. International filed "Proposed Reply Findings of Fact and Conclusions of Law" on November 24, 1982.

Findings of Fact

Organizational Structure of International

17. International, a California for-profit, stock corporation, is the licensee of Station KTBN-TV (formerly Station KLXA-TV), Channel 40. One hundred percent of International's stock is owned by Trinity Broadcasting Network, Inc. (Trinity), a California not-for-profit, nonstock corporation. Since Trinity's acquisition of International in August of 1974 (File No. BTC-7389), their respective boards of directors have consisted of the same individuals and both boards hold their meetings at the same time. Since January 1978 both boards have been operated with three directors. When International filed its Santa Ana construction permit application on February 13, 1978 its officers/directors were: Paul F. Crouch, President, Demos Shakarian, Vice-President, and Norman Juggert, Secretary/Treasurer. (International Ex. I; TR 808, 818-19)

18. There is little operating distinction between International and Trinity. Crouch has been, and remains, the chief executive officer of Trinity since its formation in August 1973 and of International since its acquisition by Trinity in August 1974. (TR 760, 763, 810-11; International Ex. I) 3/ At the time International filed its Santa Ana application Crouch was the only director/officer with day-to-day responsibilities at Station KTBN-TV. (International Ex. I) 4/

Background re Allocation and Utilization of Channel 40

19. Channel 40 was initially allocated to Riverside, California, and was licensed to Fontana, California, under the Commission "15 mile" rule, Section 73.607(b), permitting a channel to be licensed to any community within fifteen miles of the community of assignment. Since November 10, 1972, the main studio had been located by the then licensee in North Hollywood, California. After gaining control of International in August 1974, Trinity moved the station's main studio to Santa Ana, California, without informing the Commission of the move, in violation of Section 308 of the Communications Act of 1934, as amended, and Section 73.613(b) of the Commission's Rules. For this violation, the Commission imposed a forfeiture of \$5,000. International Paxorama TV, Inc., 52 FCC 2d 258 (1975). The forfeiture was paid by International on May 13, 1975. (TR 828)

20. In 1976, having made this unauthorized move, International requested special temporary authority to operate the station from the Santa Ana studio. The Commission granted the request, but conditioned its approval on the requirement that International file a rulemaking petition to change the channel allocation from Riverside to Santa Ana. International filed such a petition.

21. International's rulemaking petition requesting the reallocation of Channel 40 from Fontana to Santa Ana also requested that the Commission issue a show cause order modifying International's Channel 40 license to specify Santa Ana as its new community of service without being subject to competing applications. (TR 585-86) However, that show cause request was denied in the Commission's August 19, 1977 Report and Order. 5/ The Commission ruled that International had to file a permit application for Santa Ana. On February 13, 1978, International filed its construction permit application to operate a television station on Channel 40 at Santa Ana. (International Ex. I; TR 530, 585-86)

3/ International's pro forma assignment of licensee application (FCC Form 316) seeking Commission approval to assign Station KTBN-TV, Channel 40, to its parent corporation Trinity Broadcasting Network, Inc. was granted on December 15, 1982.

4/ No other officer or director was involved in day-to-day activities at Station KTBN-TV until Mrs. Jane Duff replaced Shakarian as Vice-President/Director in mid-1979. (International Ex. I) Terry Hickey, a former assistant-secretary, was an officer who worked at the facility from February 1979 until mid-1979, when Mrs. Duff assumed her responsibilities. (TR 897)

5/ Riverside and Santa Ana, California, 65 FCC 2d 920; 41 RR 2d 336 (1977); reconsideration denied, 68 FCC 2d 557, 558 (1978)

Filing of Renewal Application - August 1, 1977

22. Prior to the filing of the permit application for operation at Santa Ana, International had, on August 1, 1977, filed a renewal application (BRCT-645) for Channel 40 at Fontana. (TR 470, 841) 6/ International had conducted an ongoing ascertainment effort for its Fontana renewal application. Community leaders were interviewed. The renewal application did not contain a list of those leaders interviewed or dates of the interviews. 7/ This information was kept in International's public file. (TR 404)

Filing of Santa Ana Permit Application and Representations re Leader Survey

23. As noted, supra, International filed its permit application to operate on Channel 40 at Santa Ana, California on February 13, 1978. This application was executed by Paul Crouch, President of International. This permit application contained a list of approximately 230 leader interviews and represented that "these surveys were conducted during the month of October 1977." However, in fact, only nine leader interviews were actually conducted during October 1977. (International Ex. V) The statement that all the leader interviews were conducted during October 1977 is contained in the second page of Exhibit IV-1 of International's Santa Ana application. 8/ (TR 509, 515-518) The typed statement appears on an overlay taped to the page. Under the overlay, the same representation appears in hand printing. (International Ex. 2, p. 20)

Delegation of Responsibility to Timothy J. Flynn

24. Crouch, President and Chief Operating Officer of both Trinity and International, assigned and delegated the responsibility of preparing and assembling the renewal application and the Santa Ana permit application to Timothy J. Flynn. Flynn began working for Trinity full time in 1974. He had majored in radio and TV film at college, and had been working in radio since he was seventeen. Flynn was originally hired by Crouch in 1973 as a free-lance director when Trinity was in its beginning stages, prior to Trinity's acquisition of International. After Trinity acquired International and became the licensee of Channel 40 in August 1974, Flynn began working as a full-time staff director/producer of television programs. Shortly thereafter, he became sales manager for Trinity. In 1975, Flynn was promoted to Production Director, and between 1975-76 he became Program Director of Trinity. (TR 405, 407-10, 413-14, 418, 428, 472-73, 512-13, 760-62, 768-69, 775-77, 862, 867-70; International Exs. I and III) 9/

6/ At the time of renewal, Channel 40's call letters were KLXA-TV. They are now KTBN-TV.

7/ The renewal contained a "Community Leader Checklist" setting forth the various categories of leaders and the number for each category interviewed. (Bureau Ex. 6)

8/ The page is titled "Leadership Interviews".

9/ Flynn was paid by Trinity although there was little operating distinction between International and Trinity. (TR 763) Flynn performed the function of program director for both International and Trinity. (TR 436)

25. As Program Director of Trinity and International, Flynn's responsibilities generally included scheduling program timeslots, station breaks, station identifications, emergency broadcasting announcements, selecting new programs and programmers, and interfacing with program producers on production and studio time. (TR 420, 767) Flynn was also the executive producer of twenty-plus programs produced by Trinity and he was in charge of developing program syndication to cable networks. (International Ex. III) Flynn was given increasing responsibilities at Trinity and as Trinity grew he assumed the responsibility of preparing applications for new broadcast facilities through subsidiary organizations. (TR 421-24, 428, 763-64; International Ex. III) From 1975 through 1977 he was responsible for preparing and helping prepare, particularly in the area of ascertainment, five applications for new facilities in which Trinity was involved through various subsidiaries. (TR 423-24, 431, 769, 772; International Ex. III). Those applications were for television construction permits in: Oklahoma City, Oklahoma, by Trinity Broadcasting of Oklahoma City, Inc., filed January 17, 1977; Seattle, Washington by Trinity Broadcasting of Seattle, filed March 18, 1977; Richmond, Texas, by Trinity Broadcasting of Texas, Inc., filed October 26, 1977; Denver, Colorado, Trinity Broadcasting of Denver, filed June 11, 1977; and Phoenix, Arizona, by Trinity Broadcasting of Arizona, Inc., an assignment application filed April 26, 1977. (TR 431, 768, 771-72; International Ex. III)

26. As noted, supra, Flynn was responsible for the preparation of International's license renewal application for Channel 40, which was filed August 1, 1977, particularly the civic leader ascertainments. (TR 439, International Ex. III) Moreover, Flynn was responsible for Channel 40's annual FCC programming, EEO, and financial reports, as well as the filing of any television translator applications, and terrestrial satellite facilities (transmit/receive and receive-only earth stations). (TR 502-03, 767; International Ex. III) Flynn was International's liaison responsible for interfacing and coordinating all necessary FCC matters with communications counsel, Gammon and Grange, and the Commission. (TR 417-20, 434, 763-64, 767-68, 854-56, 921; International Ex. III) 10/ Flynn was never a director or corporate officer of either Trinity or International. (TR 82; International Ex. 1)

27. When Trinity acquired International in 1974, Crouch carried the responsibility of interfacing on most matters with communications counsel and the Commission. (TR 763-64) Since that time (August 1974), however, Crouch's primary responsibility has been fundraising and financial matters, and as the on-air host of Channel 40's daily informational/commentary program "Behind the Scenes" and the 2 (and sometimes 3) hour prime time program "Praise the Lord." (TR 766; International Ex. I). During Flynn's tenure with Trinity/International, Crouch had minimal direct involvement with FCC matters and applications. However,

10/ Crouch made clear to Flynn that legal fees be kept to a minimum by Flynn limiting consultations with counsel. (TR 872-73, 921-22)

since he was President, Crouch signed most FCC filings, even though he had not actually prepared them. (TR 767-69, 778-80, 870) 11/ This was particularly the case in the area of ascertainties, where Flynn had been given virtually complete responsibility. (TR 869-72)

28. While Crouch conducted civic leader interviews for various Trinity applications, including the 1977 KTBV-TV renewal and the Santa Ana permit application, he was not involved in the write-up or preparation of the ascertainment portions of such applications. (TR 769-70, 772-73, 775-76). 12/

29. After Flynn resigned in January 1979, Mr. Terry Hickey began to function as Trinity/International's FCC liaison, and Crouch continued his primary role as a fundraiser and on-air personality. (TR 890, 895-97; International Ex. I). Hickey was made an officer of Trinity and International (Assistant Secretary), although he was not a member of the board. (TR 897; International Ex. I) When Hickey left Trinity/International he was replaced by Mrs. Duff, who is vice-president/director. (TR 795; International Ex. I) She assumed the responsibility for FCC liaison. (TR 798; International Ex. I). 13/

30. In preparing the Santa Ana application and its ascertainment portions, as well as in the preparation of the other Trinity applications, Flynn was given a "free-rein," by Crouch. Flynn instructed other members of the International/Trinity management staff in when, how, how many, and what civic leaders were to be surveyed. (TR 463, 632, 635, 788, 871-72) While Flynn considered Crouch knowledgeable about ascertainment, he could not rely on Crouch for any guidance or expertise on ascertainment, nor did Crouch give any. (TR 862, 870) Crouch, since he took no specific responsibility for the Santa Ana ascertainment, nor FCC matters generally, was unaware of how often or long Flynn communicated with FCC counsel or outside consultants, although he did impress upon Flynn the importance and need to keep legal fees and outside expenses to a minimum. (TR 542-43, 856, 870, 872-74, 883-84)

Flynn's Role re Renewal Application

31. Flynn personally established the procedures to be followed in conducting the leader ascertainment surveys for the Fontana renewal application filed August 1, 1977. The surveys were conducted by Trinity's management team and Flynn acted as the coordinator to ensure that the interviews were completed on time. As noted, supra, the renewal application did not contain a list of the leaders interviewed or the dates of the interviews. This information was

11/ Flynn's normal practice, after assembling an application, was to submit copies to Crouch and Gammon and Grange for review. They made changes, if necessary, prior to Crouch signing the application. (TR 423-24, 429-30)

12/ Crouch played no role in drafting or preparing any of the Santa Ana exhibits or attachments. (TR 775-76)

13/ International/Trinity changed its organizational scheme after Flynn left so that only officers or directors of the board interface with FCC counsel on non-routine FCC matters. (International Ex. I)

retained in the station's public file. (TR 463-66, 471, 494) Prior to filing the renewal application, Flynn checked to ensure that the leader interviews had been conducted within one year. 14/ An outside consulting firm was hired to conduct the general public survey. On July 27, 1977, Crouch signed the certification page of the renewal application. The application was filed on August 1, 1977. (TR 445, 454, 470, 841, 851-52)

Flynn's Role re Santa Ana Permit Application (BPCT-5154)

32. Shortly after August 9, 1977, Flynn and Crouch became aware that a new construction permit application would have to be filed for Santa Ana. (TR 472, 841) 15/ They were shocked to discover that Channel 40 would be opened to competing applications. (TR 843) It was decided that, in order to frustrate "overfilers", a massive application should be filed. (TR 472, 859)

33. The preparation of the Santa Ana application, particularly the ascertainment portions, were the responsibility of Flynn (TR 428, 472-73, 512-13, 768-69, 775, 777, 862-63, 867-70; International Exs. I and III) The application was filed February 13, 1978, and it was an extensive document, approximately 7-8 inches thick. (TR 777) At Section I, Question 5 of the Santa Ana application (FCC Form 301) International incorporated by reference Section IV-B of Station KTNB's renewal application. (TR 482-83) 16/ While only an abbreviated summary of the ascertainment International did for Channel 40's 1977 renewal, (the leader checklist) was actually in the renewal application, and no listing by name of leaders interviewed was included, all of the back-up survey material (the public survey material prepared by Media Stat as well as the names and positions of the 230 leaders forming the basis of the leader checklist) were available for public inspection at all times in Station KTNB's public file. (TR 486-87, 494, 555)

34. Flynn, who prepared the Santa Ana application, specifically incorporated the Media Stat surveys into that application. (TR 480-481) The narrative lead-in to the general public survey section of the Santa Ana application, contained in Exhibit IV-2, referenced the Media Stat surveys and referenced Station KTNB's 1977 renewal application by file number (i.e., BRCT-645). (TR 480-81, 503-04) However, no specific reference incorporation was provided in the leader survey portion of the Santa Ana application (Ex. IV-2),

14/ Flynn understood that the leader surveys for the renewal application had to have been conducted within one year of the filing of the renewal application. At the time he later prepared the permit application for Santa Ana he understood that such surveys had to be conducted within six months of filing. He was "confused" only to the extent that he questioned the wisdom of such differences. (TR 454-58)

15/ The Commission's Report and Order amending the Television Table of Assignments allocating Channel 40 to Santa Ana was released August 9, 1977; 65 FCC 2d 920, supra.

16/ International's incorporation by reference stated Section IV-B of Station KTNB's 1977 renewal granted January 27, 1978. However, there is no subsection "B" of Section IV of a television station renewal application (FCC Form 303). (TR 496-500)

despite the fact that most, if not all, of the civic leader surveys done for Station KTBN's renewal were listed by name in the Santa Ana ascertainment Exhibit IV-2.

Flynn stated that the determination to use the renewal ascertainment with the Santa Ana application "relieve[d] a load off my shoulders". (TR 474)

35. Flynn acknowledged that the decision to incorporate the Fontana renewal ascertainment into the Santa Ana construction permit application was a significant decision and would not have been his to make. He opined that it would have been made at a management staff meeting presided over by Paul Crouch. (TR 460, 461, 473, 474) While Flynn was "sure" that there was such a meeting, he did not recall the meeting. Crouch did not believe such a decision would be made at a staff meeting, explaining that he left the responsibility for preparing the ascertainment with Flynn. (TR 775, 862-63)

36. A decision was made to add a few more Santa Ana leader interviews to the permit application. (TR 474, 475) These were conducted in September and October of 1977. (TR 475) A number of Santa Ana leaders had been interviewed previously for the Fontana renewal (International Ex. 5). International already considered itself as serving a four county area including both Fontana and Santa Ana. (TR 443, 829, 830) That would not change since the same engineering was proposed and the service area would remain the same. (TR 860)

37. At the time that Flynn was given the assignment to prepare the Santa Ana application he felt that International had been let down by the Commission. Opening up the proceeding for competing applicants placed International's license in jeopardy. (TR 580) As noted, supra, Flynn also understood that all leader surveys for construction permit applications were required to be completed within six months of filing the application. There was no confusion in his mind concerning this requirement. (TR 454, 457) However, he questioned the wisdom of this requirement. (TR 458) 17/

38. When the Santa Ana application was filed on February 13, 1978, Flynn was concerned that many of the leader surveys were outdated. (TR 475-77, 483-84, 501) Flynn initially testified that he brought this concern to Crouch's attention at more than one staff meeting. (TR 484-85, 501) However, the general feeling was to get the application on file and amend later. (TR 485) However, later he equivocated, stating that he could not "remember any specific meetings" where he brought up the question of the leadership interviews getting "too old" in terms of filing the Santa Ana permit application. (TR 637-38)

17/ Primer on Ascertainment of Community Problems by Broadcast Applicants,
27 FCC 2d 650 (1971), question 15.

The Representation In BPCT-5154 That Leader Surveys Were Conducted During October 1977

39. When the Santa Ana application (BPCT-5154) was filed it contained a statement in its leader survey checklist (Exhibit IV-2) that "these surveys were conducted during the month of October 1977". (TR 533-34, 783; International Exs. I, II and III) (hereinafter "October 1977 statement") Flynn, the individual responsible for preparing the application, and the ascertainment exhibit specifically, could not recall how the October 1977 statement came to be made. Flynn's office, which consisted of himself, an assistant and a secretary, were solely responsible for assembling and typing the Santa Ana application, and the pages for ascertainment Exhibit IV-2 containing the October 1977 statement were prepared and typed in Flynn's office. (TR 509-510, 512-13, 524)

40. Flynn had no recollection of actually preparing the page containing the representation that the leader interviews were conducted during the month of October 1977. Nor did Flynn recall actually hand printing the words under the overlay or authorizing the typing of the words on the overlay. Although Flynn found similarities between it and his own handprinting, he could not testify that it was his. Flynn did not recall making any changes to the application after it was completed. (TR 519-21, 524; International Ex. 3)

41. As detailed more fully, infra, Crouch, who signed the Santa Ana application as President of International, acknowledged that his review of the application was cursory. He could not recall reviewing each page. On February 8, 1978, Crouch signed the application without specifically focusing on the ascertainment portions. He relied upon Flynn to prepare the ascertainment and the other portions of the application. At the time of signing, he did not know of the misrepresentation. (TR 777-81, 785-86, 875, 879-80)

The March 21, 1978 Gammon Letter to Flynn

42. Shortly after the Santa Ana application was filed, Gammon, International's communications counsel, wrote a letter dated March 21, 1978 to Flynn. (TR 530, 917; International Exs. I, Attachment 1, and III) In that letter counsel noted that the application represented that all the community leaders were surveyed in October 1977. Counsel inquired of Flynn whether this statement was correct, expressing his understanding that leaders in Santa Ana had been surveyed in October and that the leaders in the four county area were surveyed prior to October 1977 for Channel 40's renewal. Counsel, emphasizing the need to be precise, advised that any innocent misstatements should be corrected. (TR 531, 918; International Ex. I, Attachment 1, and Ex. III)

43. Although Flynn claimed that he was shocked when he received counsel's letter, he could not remember: (1) checking the application; (2) bringing the statement to Crouch's attention; (3) notifying Crouch that new ascertainment was necessary; or (4) routing counsel's letter to Crouch. (TR 533-38)

Flynn's March 27, 1978 Letter to Gammon

44. Flynn, in response to Gammon, wrote on March 27, 1978 and reported that only the leader surveys focusing on Santa Ana had been conducted in October 1977, and acknowledging that all the other surveys had been conducted between June and July 1977. (TR 540-41, 918; International Ex. I, Attachment 1) Flynn's March 27, 1978 letter also questioned the need to do additional leader ascertainment. Flynn wrote:

Jim, if this undergirding is necessary, we will get on it and do a good job of it. I am just trying to evaluate in my own mind whether or not the Ascertainment as is might not "tippy-toe" its way through the Commission based upon the fact that this is, at best, a very unusual application. If we do not receive any competing applications, I do not expect the Commission to scrutinize it all that carefully, but to simply pass it through the bureaucracy as quickly as possible so as to avoid the mere embarrassment of its very existence.

Please let me know your feelings in this matter.
(International Ex. I, Attachment 1)

45. Flynn explained that his letter was born out of frustration. He believed that Trinity's license had been placed in jeopardy in the first place based upon bad advice from the Commission's staff. To Flynn, the whole idea of needing a separate ascertainment for Santa Ana was meaningless because the Commission should have allowed Trinity to modify its existing Fontana license. He believed that this situation actually should have been an embarrassment to the Commission. (TR 545-48, 580, 588-90; International Ex. III) Flynn acknowledged that, at the time of writing the letter, he was in no hurry to file the amendment. (TR 567) 18/

Gammon's Telephone Conversation With Flynn

46. As soon as Gammon received Flynn's March 27, 1978 letter, in late March or early April, he telephoned him and advised that the application had to be corrected and stated "we don't tippy-toe." (TR 919-21, 575-76; International Ex. III) During that conversation, Flynn agreed with counsel to update the Santa Ana ascertainment exhibits and file a single amendment as soon as possible with timely leader and general public surveys, and correcting the October 1977 statement. (TR 539-40, 561-63, 575-77, 919-21; International Ex. III) 19/ At that point, since Flynn had communicated that he would handle the correcting and updating amendment, counsel "washed it out of [his] mine." (TR 921) Since Flynn was interfacing on behalf of International/Trinity on all FCC matters, counsel did not notify Crouch about the misrepresentation relative to the October 1977 statement. (TR 575-77, 885, 921-923, 924, 931) Flynn's decision to wait and file one comprehensive amendment was based on his need for more time since he had a tremendous number of other responsibilities at that time. (TR 501-03, 563; International Ex. III)

18/ He explained that there was only so much he could do at the time and the requirement to conduct a new leader survey was changing the scope of his job responsibilities. (TR 563)

19/ Flynn's recollection was refreshed based on Gammon's notation at the bottom of his March 27, 1978 letter which reads: "Talked by phone on this. Tim wants to wait." (TR 561-62)

47. Flynn claimed to be extremely busy during this time period. (TR 535, 536, 542) He realized that a new ascertainment effort was needed and that the statement needed to be corrected. (TR 542, 545) However, he wanted to amend the application only once. (TR 543, 545) He believed that two separate amendments would inflate the legal bills. (TR 543) In response to the Presiding Judge's question concerning the reason Flynn wanted to avoid filing two amendments, Flynn replied, "Because we were cheap." (TR 549)

Flynn's Resignation and The Subsequent Filing of Amendment

48. Shortly after Flynn had agreed with counsel that an updating and corrective ascertainment would be prepared and filed, he contacted Bill Camfield of Business Communications, Inc. to do a general community survey and advise on a new leader survey. 20/ The necessary surveys for this updating and correcting amendment were begun within a few weeks after Flynn's March 27, 1978 letter. Flynn did not consult with Crouch concerning Camfield's employment. (TR 563-65, 568-69, 573, 888-891; International Ex. III)

49. The updating amendment containing the new leader surveys was filed March 8, 1979. By that time Flynn had resigned his position with International/Trinity and was operating his own broadcast consultant business, which specialized in ascertainments. (TR 603-04, 922; International Ex. I)

50. At the time of Flynn's resignation he sent a letter to Crouch on January 23, 1979. (TR 888-89; International Ex. III) This letter, containing a list of unfinished projects and numbering fifty (50) pages, outlined and explained the status of the various pending projects. One of those memos (pp. 39-40 of International Ex. III) was entitled "Bill Camfield" and contained Flynn's explanation of the work Camfield was doing for International/Trinity. (TR 605-608; International Ex. III) That memo stated that:

It was our initial intent to do a total leadership ascertainment which would be analyzed by Camfield and filed as an amendment to our CP application. It was later determined that we would do approximately two-thirds of the ascertainments necessary during 1978, file the amendment, and then do the remaining third (approximately 111 ascertainment surveys) during 1979 in order to show our ongoing ascertainment efforts during 1979. Camfield has been told to proceed with the initial amendments which he is doing. The report should be given to Trinity sometime during the first week of February, 1979.

Nowhere did Flynn's memo explain the reason for the amendment 21/, nor did it mention the misrepresentation in the Santa Ana application relative to the

20/ Flynn's conversation with Gammon had convinced him to file a new ascertainment and to abandon the "tippy toe" procedure. (TR 576) Trinity's management staff conducted the leader interviews. (TR 571)

21/ Flynn could not recall whether prior to his departure he specifically told anyone of the imperative need to amend the application. (TR 609-10)

October 1977 statement. (TR 606-08, 888-89) 22/ The responsibility of completing the Santa Ana amendment then fell to Terry Hickey. (TR 896-98) International's March 8, 1979 amendment did, inter alia, update the Santa Ana ascertainment; however, it did not correct the misrepresentation relative to the October 1977 statement. (TR 888-89) While the amendment was filed through communications counsel's office, a new associate, unfamiliar with the March 1978 correspondence between Flynn and Gammon, prepared the filing. There was no communication between this attorney and Gammon concerning the amendment or the previous correspondence. (TR 947, 949) 23/

Paul Crouch's Responsibilities re Station KTNB-TV

51. Paul F. Crouch has been the President/Director of Trinity since its inception in 1973. (TR 761, 809; International Ex. I) He has also been the President/Director and Chief Executive Officer of International since it was acquired by Trinity in 1974. (TR 810, 811; Trinity Ex. 1) He is also the General Manager of Station KTNB, licensed to International. (TR 811)

52. As noted, supra, Trinity owns 100% of the stock of International. Trinity and International have the same officers and Board of Directors. (TR 808) The only officer or member of the board who participated in day-to-day management in Trinity/International from 1973 until 1979 was Paul F. Crouch. (TR 809, 811; International Ex. I) In 1979, Jane Duif, a present officer/director, assumed day-to-day duties. (International Ex. I) Crouch was also the only officer/director to regularly attend management staff meetings. At these meetings management personnel exchanged ideas and Crouch delegated various responsibilities to the staff. Crouch was the ultimate decision-maker at these meetings. In financial decisions, Crouch occasionally needed authority from the board of directors. Trinity/International's checks have always needed two signatures. Crouch has always had signature authority. Crouch also had hiring/firing authority and hired Flynn in 1974. (TR 762, 817-25)

53. Crouch had been involved with broadcasting since 1957. Throughout his broadcast career his only involvement with conducting ascertainment has been helping conduct leader interviews. At no time during his broadcast career did Crouch develop an expertise in the Commission's ascertainment requirements. Since Trinity acquired International and Channel 40 in August of 1974, Crouch's principal role has been in front of the camera as an on-air host and minister. His fund raising efforts and speaking commitments require extensive travel. (TR 766-67, 811-14)

22/ As detailed, infra, Crouch became aware of the misrepresentation relative to the October 1977 statement in December 1980. (TR 783, 904-05, 907, 923-27; International Ex. I) He explained that since Flynn's memo did not include the incorrectness of the October 1977 statement he felt that this is where the whole matter "fell through the cracks." (TR 888-89) Further, Crouch recalled no meeting concerning Camfield, the work he was doing, or how much or when he was to be paid. (TR 891, 893-95, 897)

23/ As noted, infra, Crouch had no input in preparing the March 8, 1979 amendment. (TR 897)

54. As Flynn took over the responsibilities for Commission-related matters, Crouch's role in such matters was diminished. (TR 763-64) Crouch gave Flynn free rein in preparing all of Trinity's broadcast station applications, while expecting Gammon and Grange to teach Flynn about matters such as ascertainment. ^{24/} Crouch acknowledged that he kept "a tight string" on expenditures to lawyers and engineers. (TR 763-64, 870, 872, 881)

55. Crouch's only involvement with the Fontana 1977 renewal application was conducting eleven leader interviews and signing the application. (TR 773, 851, 852) It was Flynn who passed out leader interview assignments during the management staff meetings. (TR 788)

56. Crouch became aware some time in August, 1977, that a construction permit application was needed for Santa Ana. (TR 841) Although he was shocked that competing applications would be accepted, Crouch could not remember calling a staff meeting. At the time, Crouch was not familiar with the differences between the renewal and construction permit ascertainment requirements. Crouch relied upon Flynn to conduct the ascertainment and prepare the application. (TR 779-80, 843, 846-47, 862, 878) Crouch did not conduct any leader interviews for the Santa Ana application. (TR 863)

57. As noted, supra, Crouch, who executed the Santa Ana application, only gave it a cursory review. He was not aware that it contained the misrepresentation that all the leader surveys were conducted in October 1977.

58. Crouch did not become aware of the October 1977 statement until December 1980. Gammon had taken Saddleback's December 3, 1980 "Petition to Enlarge" to International/Trinity's office in California and was reviewing it with the board of directors. All were perplexed by the continuing reference in statements Saddleback had acquired from individuals International had interviewed for its ascertainment that they were "not interviewed in October 1977". ^{25/} Upon Gammon's return to Washington he checked the International application and, more particularly, the October 1977 statement. Gammon telephoned Crouch. ^{26/} Immediately, Crouch instructed that an investigation be conducted to determine how and why the statement came to be made, and by whom, and instructed that the Commission be notified immediately. An investigation was conducted, and Crouch and others contacted those people who had worked on the Santa Ana ascertainment. All parties in this proceeding were notified that the October 1977 statement was incorrect at the December 22, 1980 prehearing conference. On February 2, 1981, following Crouch's instructions, International amended its Santa Ana application and gave a complete listing of the approximately 230 leaders it had originally submitted on February 13, 1978, and detailed: (1) the names of the leaders interviewed; (2) the leader's title; (3) the group they represented; (4) the date of the survey; (5) how the survey was done; (6) who conducted the survey; and (7) the category the leader was tabulated under. (TR 86-87, 783-85, 904-05, 907, 923-27, 936; International Exs. I and V)

^{24/} Crouch could not recall what, if any, specific input Gammon and Grange had provided Flynn on these matters. (TR 870)

^{25/} The Saddleback petition contained at least eight affidavits of leaders who denied that they had been interviewed by International during the month of October 1977. (TR 924-25)

^{26/} Crouch was shocked and stunned when Gammon told him of the "now infamous statement" that the ascertainties were conducted during the month of October, 1977. (TR 784)

59. Crouch did not become aware of the March 21 and 27, 1978 correspondence between Gammon and Flynn until June 17, 1980, when his deposition was being taken by Saddleback. 27/ At that time Crouch also learned for the first time that the attorney/client privilege had been asserted by International concerning the March 1978 correspondence. (TR 792-93, 795, 936; International Ex. 1) As discussed, *infra*, International's vice-president/director, Mrs. Jane Duff, had asserted the privilege after consultation with counsel. At the noon break of his June 17, 1980 deposition, Crouch convened a board of director's meeting for International and he insisted the attorney-client privilege be waived and all facts put on the record. Upon returning to the deposition after this noon meeting the attorney-client privilege was waived, and copies of all correspondence dealing with this, particularly the March 1978 correspondence, were given to Saddleback. (TR 792-93, 795-96, 908-10, 936-38, 941-43; International Ex. 1) 28/

60. Crouch, after becoming aware of the March 1978 correspondence, particularly Flynn's March 27, 1978 letter, with the "tippy-toe" reference, acknowledged that had he been aware of the October 1977 statement and the outdated ascertainment problems he would have instructed counsel to "immediately ... put everything on the record and correct it." 29/ Crouch went on to state that the Santa Ana application was "the most important application [International has] ever done in our lives...." Crouch never approved any plan to file outdated surveys with the Santa Ana application. At no time prior to its filing was Crouch aware that the October 1977 statement had been made in the Santa Ana application or that there was any recency question at all concerning the ascertainment which was filed. When he signed the Santa Ana application he did so in good faith and believed everything was true, proper and correct. (TR 778) Crouch did not recall any meeting prior to the filing of the Santa Ana application where the ascertainment was discussed, other than those assignments for conducting surveys were handed out by Flynn. (TR 783-88, 791, 874-75, 887)

27/ Gammon explained that he had not informed Crouch in 1978 of the correspondence since he was interfacing with Flynn, who had stated he would handle the matter and the necessary amendment. (TR 885, 921)

28/ International asserted the attorney-client privilege in response to discovery requests filed by Saddleback and the Broadcast Bureau. Further, copies of the counsel/Flynn March 1978 correspondence were only found in counsel's office, not in International/Trinity's files. Gammon did not recall the correspondence until it was discovered pursuant to the various discovery requests which had been filed. Mrs. Duff was advised by counsel to assert the attorney-client privilege since counsel felt failure to do so might have waived the privilege across the board. (TR 793-95, 931, 934-35, 942)

29/ Crouch also acknowledged Flynn's "tippy-toe" letter would have alerted him to the misrepresentation, if he had received a copy at the time. (TR 887)

61. Crouch acknowledged that he gave his department heads great freedom in initiating correspondence and in maintaining their own independent correspondence files. He has established no procedure for being copied or even informed that such letters were exchanged. Crouch had no knowledge as to how Flynn maintained his files, although general files were kept at Trinity. Neither the Gammon or Flynn letters was found in Trinity's files. Rather, they both were found in the files of Gammon and Grange. (International Ex. I) Crouch also acknowledged that Gammon probably did not inform Crouch of the existence of the letters, at the time they were written, because Gammon was properly taking his orders from Flynn. (TR 882-85)

62. After Flynn's resignation, Crouch passed Flynn's responsibilities on to others. Crouch passed on the responsibility of conducting ascertainment to Hickey, an individual with no prior ascertainment experience. (TR 888-89, 891, 895-98)

63. Crouch claims that a significant change has been "instituted to tighten-up and streamline management." Now only "persons who coordinate with Washington counsel on non-routine FCC-related matters are members of the board of directors or officers." This "assures that at least one member of the board of directors is aware of decisions which have been made so they can properly be reported or discussed at board meetings." (International Ex. I, pp. 9, 10)

Gammon's Role As Communications Counsel

64. James Gammon, a partner in the law firm of Gammon and Grange, agreed that his client, Trinity/International, through Paul Crouch, had placed Flynn in charge of Commission related matters. Crouch wanted the firm to educate Flynn and hold down legal fees at the same time. The firm was instructed to take its orders from Flynn. Flynn reaffirmed to the law firm Crouch's commitment to keep the legal bills as low as possible. As a result, the Santa Ana application was not submitted to the law firm for prior review. It was sent to Gammon and Grange already signed, duplicated and ready to file with the Commission. Gammon did not check the application prior to filing. He merely added a letter of transmittal and filed the application. (TR 914-16, 922)

65. However, subsequent to the filing, Gammon reviewed the application and discovered the problem with the ascertainment representation. This precipitated his March 21, 1978, letter to Flynn. After receiving Flynn's March 27, 1978, reply letter, he telephone Flynn. (TR 944-45) As a result of that conversation, Gammon understood that Flynn would file an amendment, as soon as possible, which would correct the outdated ascertainment as well as the misrepresentation. (TR 940) Gammon proceeded to forget about the entire matter. (TR 923-24) The subsequent amendment filed after Flynn's resignation did not refresh Gammon's memory of the need to correct the misrepresentation because that amendment was not prepared by Gammon. A new associate, Carl Fielstra, handled the amendment. Gammon had not told Fielstra of the misrepresentation. (TR 918, 923-24, 940, 944-45, 947) 30/

30/ Gammon agreed that Terrence Hickey, the individual who took over Flynn's ascertainment responsibilities, was inexperienced in these matters. (TR 949)

66. Gammon acknowledged that "Mr. Crouch has consistently and progressively been further and further removed from dealing with us, dealing with FCC related matters." By the spring of 1981, the law firm was dealing with Trinity/International through Jane Duff, vice president and director of Trinity/International. (TR 937). She was the Trinity/International officer who invoked the attorney-client privilege during May 1981, concerning the letters found by the law firm in its files. ^{31/} These letters were found while complying with separate discovery requests filed by the Bureau and Saddleback in May 1981. (TR 933, 934, 959) As noted, supra, Crouch was not aware of the invocation of the privilege or of the existence of the letters until the June 17, 1981 deposition session. (TR 792, 793) Notwithstanding Crouch's prior instruction in December 1980, to make full disclosure to the Commission concerning the misrepresentation, Gammon chose not to contact Crouch concerning whether or not to invoke the privilege when the letters were discovered in Gammon's files. Rather, Gammon explained, "Mrs. Duff was the one who dealt with us at that point and Mrs. Duff is the one we contacted." (TR 935, 936, 937) Mrs. Duff, on Gammon's advice, authorized him to invoke the privilege without seeing the letters or knowing their contents. (TR 959)

67. The letters were found in Gammon's files sometime after February 2, 1981. Colby M. May, his associate, found the letters and when they were brought to Gammon's attention his reaction was "Sick in the pit of my stomach." (TR 957) Gammon explained that he was looking for "an opportunity" to inform Crouch of these letters and that he was "probably" going to tell Crouch at the time of Crouch's deposition. (TR 958)

Clarence E. Bohn, Forensic Documents Examiner

68. The original page from the narrative lead-in to Exhibit IV-2 of International's Santa Ana application, found in the Commission's docket files, contained a "cut-and-paste" overlay. Underneath the overlay there was a penciled handwritten statement also containing the October 1977 statement. This fact was not discovered by International until March 15, 1982 when Broadcast Bureau counsel informed International's counsel that such a "cut-and-paste" was in the original docket. (TR 336-340, 516, 519-20; International Exs. I and II)

69. Crouch was informed by counsel about the "cut-and-paste" page and the handwriting underneath, and he instructed that an immediate investigation be undertaken to discover whose handwriting it was. (TR 804; International Ex. I) Subsequently, Clarence E. Bohn, a forensic documents expert, was retained by International, and handwriting samples from everyone connected with the original Santa Ana application were obtained. (International Ex. II) ^{32/} Overall, Bohn reviewed eighteen (18) handwriting samples, and, based on his examinations, expressed the opinion that it was "highly likely" that the author of the handwriting underneath the "cut-and-paste" overlay was Flynn, and it was highly unlikely anyone else penciled the October 1977 statement. (TR 660-61, 685; International Ex. II) Flynn acknowledged that his handwriting appearing in the

^{31/} Gammon explained that he had no recollection of these letters when he discussed the matter with Crouch in December, 1980. His recollection was only refreshed when he read the letters after discovering them in his files.

^{32/} Bohn, a forensic document examiner with over 15 years of experience, was ruled to be an expert. (TR 655)

samples furnished to Bohn was as he usually writes, and that from 1978 to present his handwriting has remained consistent, with no changes having occurred. (TR 392-393) Flynn could not identify the writing underneath the "cut-and-paste" overlay as his; however, he could not state it was not his. (TR 520-21, 627) 33/ Flynn acknowledged that the page containing the "cut-and-paste" overlay and the handwriting were prepared and typed in his offices in Tustin, California, and that it would have been his responsibility to prepare those pages. However, he could not specifically recall doing so. (TR 512-15)

Ultimate Findings of Fact and Conclusions of Law

1. International Panorama TV, Inc. (International) is the only applicant remaining in this proceeding. It is presently authorized to operate Station KTBN-TV at Fontana, California. As detailed in the findings, the Commission, by Report and Order 34/, reallocated Channel 40 to Santa Ana, at International's request, and ruled that International had to file a construction permit application to operate Station KTBN-TV at Santa Ana. It is that permit application, filed February 13, 1978, which is the subject of this proceeding. The sole issue remaining for resolution seeks to determine all of the facts and circumstances surrounding the representation in the permit application, as filed on February 13, 1978, that the community leader interviews were conducted during the month of October 1977 and whether International is qualified to be a broadcast licensee. For the reasons set forth, infra, it is concluded that International is not disqualified to be a licensee and that the public interest would be served by a grant of its application.

X 2. It is undisputed that the representation that the leader surveys were all conducted in October 1977 was untrue and that the great majority of these interviews were conducted at a much earlier date in connection with the filing of the renewal application for Station KTBN-TV on August 1, 1977.

3. Paul Crouch, the president and chief operating officer of International, executed the Santa Ana permit application and attested to the accuracy and correctness of the statements contained therein. However, he did not prepare that portion dealing with the ascertainment of the community needs or any other portion of the application. In fact, his review of the application was, at most, cursory. As noted by the Mass Media Bureau (Bureau), Crouch's review of the application amounted to little more than signing it.

33/ Flynn explained that "I see some similarities and I see some dissimilarities" ... I don't know for a fact, I can't swear either way that is my handwriting." (TR 521)

34/ 65 FCC 2d 920; 41 RR 2d 336 (1977); reconsideration denied; 68 FCC 2d 557, 558 (1978).

4. Timothy Flynn, an employee of International 35/, was responsible for the preparation of the Santa Ana permit application in its entirety and, more particularly, the ascertainment portion. Flynn was well aware at the time of the filing of the application that the great majority of the community leader interviews were outdated. In fact, he had been concerned about this deficiency at the time of the application's preparation. However, the record establishes that Flynn, who had also prepared the earlier renewal application for Station KTBN-TV, viewed the requirement of filing the permit application and a new ascertainment showing as a needless additional burden. He felt that the filing of a permit application was a penalty imposed by the Commission which placed International's license in jeopardy since it allowed other mutually exclusive applicants to file for the Santa Ana facility. 36/ The totality of the evidence establishes that it was Flynn who authored the false representation that all of the community leader surveys had been conducted during the month of October 1977. The record further establishes that Flynn, in responding to the March 21, 1978 letter of James Gammon, International's communications counsel, evidenced a total disdain for this Commission and its ascertainment requirements. Counsel had questioned the correctness of the representation that all the leader surveys had been conducted in October 1977, emphasizing the need to be precise. Flynn, in his March 27, 1977 letter to counsel, acknowledged that the representation was incorrect and that the leader surveys, with a few exceptions, were conducted during June and July 1977. Flynn suggested that they do nothing to correct this falsehood, but rather wait and see whether the Commission discovered the deception. 37/ He only agreed to make a new leader survey when communications counsel insisted. It is found that Flynn deliberately misrepresented to this Commission as to when the community leader interviews were conducted.

5. It is further found that Flynn made no effort to correct this serious misrepresentation in a timely manner. More than 3 years elapsed before the Commission learned of this serious misrepresentation. Moreover, this disclosure only resulted from the persistent efforts of counsel for Saddleback, International's then mutually exclusive adversary. Flynn and International's communications counsel must share the responsibility for this situation. As noted, supra, in late March or early April, 1978, Flynn reluctantly agreed that a new leader survey would be conducted. Flynn and counsel agreed that when the leader survey was completed an amendment would be filed containing the new survey and disclosing that the earlier representation was incorrect. However, when the amendment was filed approximately a year later it made no reference to the fact that the representation as to the leader surveys made in the application, as originally filed, was totally inaccurate. The Presiding Judge is constrained to observe that communications counsel should have insisted that a correction be filed immediately rather than awaiting the preparation of the amendment.

35/ Flynn was neither an officer or director of International.

36/ In fact, Saddleback Broadcasting Company, Inc. filed a mutually exclusive permit application, which was subsequently dismissed.

37/ Since the ascertainment showing did not identify the surveyed leaders by name or give the date of the interviews, the Commission's staff had no way of knowing that a serious misrepresentation was set forth in International's permit application. The Commission is entitled to expect that applicants will be truthful and candid in their dealings with the Commission. RKO General, Inc. v. FCC, 670 F. 2d 215, 229, 232 (U.S.C.A., D.C. 1981)

6. The record establishes that Crouch was unaware when he signed the application that it contained a misrepresentation. Additionally, Crouch was not informed of the misrepresentation upon its discovery by communications counsel. It was not until December 1980 that Crouch first learned that the application he had signed in early 1978 contained a serious misrepresentation. He immediately instructed communications counsel to conduct an investigation and to make full disclosure to the Commission of the facts. When he learned in June, 1981 of the letters written by Flynn and communications counsel in 1978 relative to the misrepresentation he directed that these letters be made available to the parties to this proceeding. The Presiding Judge is constrained to express the view that communications counsel's action in having another officer of International's invoke the attorney-client privilege relative to these letters after Crouch had instructed that full disclosure be made to the Commission is subject to criticism. 38/

7. The Review Board has made clear that a finding of misrepresentation requires falsity and evidence of an intention and a motive to deceive, mislead or conceal. Gross Telecasting, Inc., ___ FCC 2d ___, (FCC 82R-63), released November 10, 1982. Fox River Broadcasting, Inc., 88 FCC 2d 1132, 1135 (Rev. Bd. 1982) Crouch, the individual who executed the application, was unaware that the application contained any inaccuracies or untruths. As a consequence, Crouch is innocent of any misrepresentation or wrongdoing. What he is guilty of is a total delegation of functions to Flynn and, as a result, an abdication of the responsibility to have assured himself that all of the representations in the application were true and correct. Were this still a comparative proceeding, a substantial demerit would be assessed against International. However, as noted, supra, International is the sole applicant and it is concluded, as urged by International and the Bureau, that the facts do not warrant disqualification.

Accordingly, IT IS ORDERED, that, unless an appeal from this Initial Decision is taken by a party or the Commission reviews this decision on its own motion, in accordance with the provisions of Section 1.276 of the Commission's Rules, 47 CFR 1.276, 39/ the construction permit application (BPTC-5154) of International Panorama TV, Inc. IS GRANTED.


Thomas B. Fitzpatrick
Assistant Chief Administrative Law Judge
Federal Communications Commission

38/ It is clear that Crouch would have directed immediate disclosure of these letters had he been made aware of their existence by communications counsel.

39/ In the event exceptions are not filed within 30 days after release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release, pursuant to 47 CFR 1.276(d).